

November 1996

Vol. 8, No. 10 (C)

CHINA

SLAMMING THE DOOR ON DISSENT

Wang Dan's Trial and the New "State Security" Era

- [I. SUMMARY AND RECOMMENDATIONS](#)
- [II. BACKGROUND TO THE CASE](#)
- [III. THE STATE'S CASE AGAINST WANG DAN](#)
- [IV. MANUFACTURED QUOTATIONS](#)
- [V. DANGEROUS LIAISONS](#)
- [VI. CONCLUSIONS: A NEW LOOK FOR CHINA'S LAWS ON DISSENT](#)
- [VII. APPENDIX I\(a\): BILL OF INDICTMENT AGAINST WANG DAN](#)
- [VIII. APPENDIX I\(b\): APPLICABLE LEGAL STATUTES](#)

I. SUMMARY AND RECOMMENDATIONS

With its decision to bring Chinese dissident Wang Dan to trial on October 30 on the charge of "conspiracy to subvert the government," the most serious charge in the Chinese criminal code, the Chinese government has signaled its determination to deny freedom of speech and association to any citizen daring publicly to raise fundamental criticisms of government policy. The charge sends a message to China's dissidents that the courts will no longer draw a distinction between political speech or writing on the one hand and concrete action on the other: both levels of dissent are henceforth to be indiscriminately treated as "endangering state security." It casts serious doubt on the commitment of top Chinese officials to the vaunted reform of the country's legal system. And it shows conclusively that Western mantras about economic growth producing political liberalization notwithstanding, Chinese leaders are growing increasingly intolerant of dissent. In addition, by holding Wang Dan's trial just weeks before the visit to Beijing of U.S. Secretary of State Warren Christopher and just weeks after visits of German Foreign Minister Klaus Kinkel and Italian Foreign Minister Lamberto Dini, Beijing has chosen to disregard international expressions of concern over its human rights record.

Human Rights Watch/Asia calls on the Chinese government to release Wang Dan and drop all charges against him. The government should also permit international observers, from the diplomatic community, the press corps and international legal and human rights organizations, to attend the trial in Beijing Intermediate Court No.1.

If Wang Dan is found guilty as charged, the international community must not stay silent:

China's chief trading partners, including the United States, the European Union, Australia, Canada and Japan, should postpone plans for any official trade missions to China where government ministers accompany corporate representatives for the express purpose of signing major business deals. There should be a moratorium on such ministerial-led visits until major human rights improvements, including the release of key political prisoners, take place.

Human rights in China should be a top agenda item in any high-level bilateral meetings with senior Chinese officials, including President Jiang Zemin, at the time of the Asia Pacific Economic Cooperation (APEC) summit in Manila, November 20-25. Officials from APEC countries should publicly call for human rights improvements as an integral ingredient of China's long-term economic and social development.

State visits, including proposed summits of Chinese leaders with the presidents of Germany (November) and the U.S. (sometime in 1997), should be used as leverage for achieving concrete human rights objectives and should only take place if those objectives, including the release of key prisoners, are achieved.

The countries in Africa, the Asia-Pacific region, Europe and the Americas, including the U.S. that support progress on human rights and that are represented on the U.N. Human Rights Commission, should begin efforts now to ensure that a resolution on human rights in

China and Tibet is introduced and passed during the next session of the Commission in Geneva in 1997.

II. BACKGROUND TO THE CASE

Wang Dan, then a history student at Beijing University, had been a leader of the protests in Tiananmen Square in 1989 and was sentenced to four years in prison as a result. After serving most of his term, he was paroled in February 1993 but continued to speak out against what he saw as injustice and lack of redress for the victims of the June 4 crackdown. He was detained again in Beijing on May 21, 1995 for having coauthored and signed various petitions to the government in the run-up to the sixth anniversary of that crackdown. On May 24, police informed the family that Wang was under investigation for "disturbing the social order" and, in a sign that he was in for a long stay, that they could send him a parcel of clothes. For almost seventeen months thereafter, Wang was held incommunicado by the authorities at an unknown location. On October 10, Wang's mother, Wang Lingyun, was informed that the prosecution indictment against him was now ready (a copy is attached) and that she had twenty-four hours in which to find a lawyer to defend him against the charge of conspiring to subvert the government, a crime punishable by a minimum of ten years' imprisonment and by a maximum of death.

The alleged offenses in Wang Dan's case consist mainly of publishing articles in the overseas press deemed objectionable by Beijing and of receiving donations from abroad for the provision of humanitarian relief to imprisoned and released dissidents. These are actions that in the past would have attracted at most the charge of "counterrevolutionary propaganda and incitement." In Wang Dan's case, they have been arbitrarily interpreted in the indictment to constitute subversion and a fundamental "threat to state security." These features of the prosecution indictment appear to reflect the government's plans to replace the Criminal Law's statutes on "counterrevolutionary crime" with the seemingly more neutral and internationally acceptable statutes referring to "crimes of endangering state security." These changes are reportedly to be introduced at the next plenary session of the National People's Congress in March 1997.

The Wang Dan indictment in a sense constitutes a "transitional text" in this legislative reform process. Far from signaling any greater official tolerance of dissent in future, the impending legislative revisions will in practice mean the reverse, with top dissidents being charged with more serious crimes and receiving substantially heavier sentences than in the past.

In one sense, Wang Dan's imminent trial merely represent the latest round in a pattern of governmental repression in China. Its significance, however, goes beyond the silencing of an outspoken critical voice. The fact is that China's urban dissident movement, after seven years of struggling to survive and reassert some measure of influence in the country's political affairs since June 1989, has in effect been comprehensively smashed. In a series of political trials held since 1994, and similar to the one Wang Dan now faces, the authorities have driven home the message that no degree of overt political opposition, however peacefully expressed, will be tolerated. Among the most prominent such cases:

On October 8, 1996, Liu Xiaobo, a renowned literary critic and former professor of Chinese literature who helped negotiate the safe departure of students from Tiananmen Square on June 4, 1989, was summarily arrested. Together with Wang Xizhe, a veteran dissident from southern China, Liu had coauthored an open letter to the Chinese and Taiwan governments in late September calling for a peaceful solution to the question of national reunification; asking that the Chinese Communist Party finally deliver on pledges of free speech and party pluralism; and pointing out that under China's constitution, President Jiang Zemin should be impeached for having recently claimed that the People's Liberation Army was under the "absolute leadership of the Party" rather than the national legislature. He was arrested by police at his home in Beijing, and the following day, he was sentenced by the Public Security Bureau without benefit of a trial to three years' "reeducation through labor." Fearing imminent arrest, Wang Xizhe, who had served almost twelve years of a fourteen-year sentence imposed in 1981 for previous dissident activity, went into hiding and subsequently escaped from China, arriving in the U.S. on October 15.

In September 1996, the trial of Zhang Zongai took place. Zhang is a former elected member of the Xi'an People's Congress who spent five years in jail for denouncing the government's crackdown on the 1989 pro-democracy movement, on charges of "counterrevolutionary propaganda and incitement," in part for having written letters seeking guidance from the Taiwan news media on how to bring democracy to China and for conducting an interview with Wang Dan prior to the latter's redetention. The outcome of trial is as yet unknown.

In late September 1996, there was the reported trial and sentencing of Guo Haifeng, a student leader of the 1989 Tiananmen Square protest movement who served more than three and a half years in jail for his activities at that time, to seven additional years' imprisonment on charges of "hooliganism," apparently for assisting another dissident to flee China.⁽¹⁾

On July 4, 1996, Liu Nianchun, human rights and labor activist, was administratively sentenced to a three-year reeducation through labor term, the three years to be served on top of the fifteen months he had already been detained. Liu had disappeared into residential surveillance on May 21, 1995, the same day that Wang Dan vanished.

In May 1996, the secret trial took place of Li Hai, a graduate student who spent a year in prison after June 1989 and then co-sponsored the 1993 "Peace Charter," only to be rearrested in May 1995 for allegedly "leaking state secrets," a charge apparently related to his human rights' monitoring activities. Almost six months after the trial, Li's family still had not been informed of the sentence.

In December 1995, Wei Jingsheng was sentenced to a further fourteen years' imprisonment on the counterrevolutionary charge of "conspiracy to subvert the government" for having dared, following his release in September 1993 from an even longer previous sentence for dissident activities, to continue publishing articles critical of the government and calling for greater civil and political freedom in China.

In December 1994, Hu Shigen, Kang Yuchun and Liu Jingsheng, activists who attempted to organize an unofficial labor union and create a political party devoted to social-democratic goals, were sentenced to prison terms of twenty, seventeen and fifteen years respectively on various major charges of counterrevolution.

Meanwhile, hundreds of other known political dissidents, unofficial religious activists and believers, independent labor-rights advocates and ethnic-minority rights campaigners in Tibet, Xinjiang and Inner Mongolia who have been rounded up by the security authorities and sentenced after unfair trials over the past decade remain behind bars throughout China, increasingly forgotten by the international community as trade and security interests dominate relations with China. The true number of those currently imprisoned in China for exercising their rights to freedom of speech and association far exceeds those cases currently known to outside monitoring groups.

III. THE STATE'S CASE AGAINST WANG DAN

As noted above, Wang Dan was taken into custody by public security officials in May 1995 and then disappeared for more than a year. On October 14, 1996, he was granted a one-hour meeting with his mother, his first contact with the outside world since his detention, to discuss and prepare his defense strategy. Wang was said to be in poor physical condition; he is believed to be suffering from throat and prostate ailments although it is unclear whether he has had any access to medical care during his detention. He is nevertheless said to be "mentally prepared" to receive a heavy sentence at his trial, since not only has he been charged with committing the most serious offense in China's Criminal Law, but the procuracy has also branded him a "repeat offender" and asked the court to sentence him with "extra severity." It thus appears that lenient treatment has been ruled out in Wang's case, although international pressure has sometimes been able to secure a lighter sentence.

According to details entered in the prosecution indictment, Wang was held under "residential surveillance" (*jianshi juzhu*) from May 22, 1995, the day following his initial detention, onwards. Under Chinese law, "residential surveillance" is supposed to be a minor "coercive measure" whereby a suspect is allowed freedom of movement under surveillance within a specified radius of his or her home. In recent years, however, Chinese police have increasingly applied the measure against dissidents and others as a means of circumventing lawful time limits on criminal detention, turning it into a disguised form of arrest. In the case of China's leading dissident and Nobel peace prize candidate Wei Jingsheng, who was held incommunicado by police under so-called residential surveillance for twenty months prior to his formal arrest and sentencing in December 1995, the court compounded the illegality by refusing to deduct this period from his new fourteen-year sentence on the grounds that Wei had not been "detained" during that time. His sentence was thus effectively increased to almost sixteen years. Presumably Wang Dan will encounter the same treatment at his trial.

But this was merely the first in a series of procedural violations committed by the police in both cases. According to the Criminal Procedure Law, formal arrest (*daibu*), to be approved by the procuracy upon the police's establishment of sufficient preliminary evidence of an offense, must follow within ten days of a suspect's initial detention, or the person is to be freed. In the former case, the suspect's family must be informed within twenty-four hours of the decision to make an arrest. There then follows an often lengthy period of "investigative custody," during which the police are required to obtain sufficiently clear evidence of guilt to justify making a request to the procuracy for a public prosecution to be initiated in court. Further time is then legally required for the procuracy to examine and approve the police's request and, eventually, to prepare the bill of indictment, forward it to the court and present a copy to the defendant's family. In Wang Dan's case, the prosecution indictment, dated October 7, 1996, notes that Wang was not formally arrested until October 4, 1996, thus indicating that the entire post-arrest criminal process had been telescoped into a mere three-day period.

The core illegality lies in the authorities' claim that during the actual period of investigative custody, Wang was not in police detention but merely under residential surveillance--when in practice it is clear that all relevant phases of the criminal process were actually carried out and completed during that period. But in addition, Wang's family were neither informed that formal arrest had been carried out until more than a week after the event, nor given a copy of the bill of indictment until Wang's mother asserted her right to serve as one of his defenders in court, together with the lawyer that she had managed to find within the police's arbitrarily imposed time-limit of twenty-four hours.

Although more obvious in Wang's and Wei's cases than in most others, such procedural violations are in fact the norm rather than the exception in China's judicial system in the cases of leading dissidents or "counterrevolutionaries." In view of the international plaudits reaped by the Chinese government following revisions to the Criminal Procedure Law that were passed by the National People's Congress earlier this year, the question arises as to what grounds exist for believing that China's law enforcement authorities will be prepared to abide by the more stringent standards of judicial process scheduled to come into force in January 1997, when they have shown such consistent disregard for the much less onerous standards that currently apply.

IV. MANUFACTURED QUOTATIONS

In reviewing the detailed allegations raised against Wang Dan in the prosecution indictment, one is reminded of what Bao Tong, the former chief aide to ousted Premier Zhao Ziyang, is reported to have said upon reading the indictment brought against him after June 1989: "It's not so much what they've accused me of getting up to, it's that they really haven't accused me of doing anything."⁽²⁾

The procuracy commences its case by citing Wang's authorship, after his release from prison in February 1993, of some thirty articles that were published in the Hong Kong, Taiwan and Western news media, and in which he allegedly "incited turmoil" and "sought to create public opinion in support of the overthrow of the state power and the socialist system." Only three of the articles are cited by name, however, and only a few brief phrases and sentences from those are actually quoted in the indictment in support of the authorities' accusations. The procuracy apparently viewed these quotations as being so conclusively damning that there would be no necessity for it to burden the court with any more specific examples drawn from the remaining twenty-seven or so offending articles mentioned in the indictment.

The first item of evidence produced is an article that appeared in Hong Kong's *Ming Bao* in September 1994 titled "On the Urgency of Democratic Reform in China." In that article, notes the indictment,

The defendant attacked the Four Basic Principles laid down in China's Constitution as being "like a paper horse that falls at the first touch."⁽³⁾

By the normally lurid and inventive standards of Chinese political metaphor, this is a relatively timid formulation. Most Chinese dissidents worth their salt would probably have deployed the ever-popular "praying mantis who vainly obstructs the wheel of history" and would almost certainly have opted for a "paper tiger" in preference to Wang's horse. But since the Chinese authorities have no known plans to introduce laws prohibiting mixed metaphor, the Beijing procuracy must have a different argument to pick with Wang. Although not presented in the indictment, the actual context in which Wang made his disparaging equine remark was as follows: